

**Board Meeting Date:** January 23, 2024  
**Special Notice / Hearing:** 10-day notice;  
publication and  
300-foot radius  
**Vote Required:** Majority

**To:** Honorable Board of Supervisors  
**From:** Steve Monowitz, Director of Planning and Building  
**Subject:** EXECUTIVE SUMMARY: Consideration of an appeal of the Planning Commission's decision to approve a Non-Conforming Use Permit (NCUP) and Major Modification of an approved Design Review Permit and Grading Permit at 570 Live Oak Lane in the unincorporated Emerald Lake Hills area.  
County File Number PLN 2019-00400 (Herring)

**RECOMMENDATION:**

Public hearing to consider an appeal of the Planning Commission's decision to approve a Major Modification of a Design Review Permit, Non-Conforming Use Permit (NCUP), and Grading Permit, to allow construction of a 2,466 sq. ft. single family residence at 570 Live Oak Lane in the unincorporated Emerald Lake Hills area:

- A) Open public hearing
- B) Close public hearing
- C) Deny the appeal and uphold the Planning Commission's decision to approve the Non-Conforming Use Permit and Major Modification of a Design Review Permit and Grading Permit, PLN 2019-00400, by making findings and adopting the conditions of approval in Attachment A and determining that the project is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15303.

**BACKGROUND:**

The applicant proposes to construct a 2,873 sq. ft. single-family residence, attached 486 sq. ft. two-car garage, pool, and 640 sq. ft. Accessory Dwelling Unit (ADU) on a non-conforming, 8,232 sq. ft. parcel, where 75,000 sq. ft. is the minimum lot size for a lot with a 45 percent slope. The project requires grading in the amount of 240 cubic yards (c.y.) of cut and 240 c.y. of fill and removal of six (6) significant trees. This proposal is a modification to the 2022 approval of a 2,466 single-family residence with a 457 sq. ft. detached garage. The applicant seeks a Non-Conforming Use Permit for additional floor area and lot coverage, including 1) floor area of 35.9 percent where 30 percent is the maximum 2) 33.5 percent lot coverage where 25 percent is the maximum and 3) to

allow a 1-foot front setback where 20 feet is required for the 640 sq. ft. ADU on an undeveloped parcel.

**DISCUSSION:**

On August 8, 2023, the Planning and Building Department received an appeal of the Planning Commission's decision. The appeal states that the project did not meet County Fire's conditions of approval, dated August 31, 2022 pertaining to the fire truck turnaround (Attachment F). The appeal also raises concerns regarding the existing condition of Live Oak Lane roadway and requests that the County require the applicant to complete additional roadway improvements and maintain a turnaround in the right-of-way.

The Applicant responded to the appeal by working with County Fire to revise the fire truck turnaround design and has received Fire's conditional approval. County Fire's approval includes the following requirements: 1) the project is required to have a 4 head sprinkler system; 2) the project is required to expand the public right of way in two areas along Live Oak Lane (260 s.f. of new paving) and install 65 feet of retaining wall; 3) the owner is required to record a maintenance agreement with the Department of Public Works; and 4) County Fire must review and approve the on-site Emergency Vehicle Turning Access Easement, which must be prepared, executed and recorded prior to issuance of a building permit. Determinations of whether to allow for options to the standard fire requirements are made by County Fire, who has approved an AM & MA for this project.

The Appellant asserts that the Planning Commission did not have full information regarding the necessary changes required by County Fire's conditions of approval when it approved the project and that the project does not meet County Fire conditions of approval dated August 31, 2022 that are listed below:

- a. *Minimum road width of 20 feet and load requirements to support a fire apparatus of 75,000 lbs.*

Staff's response: The Emergency Vehicle Turning Access Easement found on Attachment A of the AM & MA illustrates expansion of the existing right-of-way to 20 feet with additional paving and retaining walls. The existing road width of Live Oak Lane to the north of the parcel is allowed as a part of the revised AM & MA, approved by County Fire (Attachment H), due to the existence of areas of steep topography which prevents full compliance with County Fire standards.)

- b. *Where a fire hydrant is located in the access road, a minimum road width of 26 feet is required with a minimum of 20 feet of clearance on each side of the hydrant.*

Staff's response: The existing hydrant, which is located opposite the subject parcel on Live Oak Lane does not meet the 26-foot right-of-way width but has been determined to be adequate by County Fire, when combined with other alternative methods for the project to meet fire safety measures. This requirement has been removed from County Fire's conditions of approval based on the revised and approved AM & MA (Attachment H).

- c. *Access shall be provided from a publicly maintained road.*

Staff response: Live Oak Lane is not a publicly maintained road in front of the subject parcel. The approved AM & MA recognizes this condition and, accordingly, includes a requirement that the access be constructed and maintained to standards as determined by the Department of Public Works and County Fire (Attachment H). On that basis, the referenced requirement has been removed from County Fire's conditions of approval.

- d. *The appeal letter also includes assertions by the Appellant that there is bias on the part of DPW staff and the Planning Commission.*

Staff's response: The Appellant makes these assertions based on what they perceive to be intentional delay by DPW staff in communicating their concerns to County Fire and admiration for the design of the project by a Planning Commissioner. These assertions focus on the perceived intentions of these persons in performance of their professional duties, instead of on the compliance aspects of the project. There is no evidence indicating any conflict of interest or undue influence upon these individuals in the performance of their duties.

The Planning Commission approved the Non-Conforming Use Permit, Major Modification of the Design Review Permit, and Grading permit on July 26, 2023 by making the findings for each permit. These were not challenged in the appeal.

Based on the discussion of approved Alternate Methods and Means Agreement for the project and how it addresses the concerns brought forth in the appeal, the appeal concerns are addressed.

This report has been reviewed and approved by the County Attorney's Office as to form.

**FISCAL IMPACT:**

There is no fiscal impact to the County from denying the appeal and upholding the Planning Commission's approval of the requested permits.